

### **REMARKS/ARGUMENTS**

The Official Action dated October 1, 2004 has been carefully considered. Accordingly, the changes presented herewith, taken with the following remarks, are believed sufficient to place the present application in condition for allowance. Reconsideration is respectfully requested.

By present amendment claims 1, 6, 7, 10, 12 and 14 have been amended to more clearly define the invention. Support for the amendments to claims 1, 6, 7, 10, 12 and 14 may be found in the specification as originally filed. Since these changes are believed to be fully supported by the specification, claims and drawings as originally filed and no new matter is intended or believed to be involved, entry is believed to be in order and is respectfully requested.

#### **I. Information Disclosure Statement**

In the Official Action, the information disclosure statement filed March 29, 2004 and June 3, 2004 was objected to under 37 CFR 1.98(a)(2) for failing to provide a copy of the information referred to in the "Other Document Section." Copies of US 2002/0007903 A1, US 2001/0030020 A1 and US 2002/0041945 A1 are enclosed herewith. Applicants request the Examiner to consider the enclosed references.

#### **II. Double Patenting**

In the Official Action, claims 1, 7 and 12 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 13, and 17 of copending application No. 10/350,594 in view of Kremen, U.S. Patent Application Publication 2002/0029635.

While Applicants believe the present claims are patentably distinguishable from those of the cited copending application, a Terminal Disclaimer in compliance with 37 C.R.R. 1.321(c) to overcome the provisional rejection based on the judicially created doctrine of obviousness-type double patenting is submitted herewith. The filing of a Terminal Disclaimer serves the statutory function of removing the rejection of double

patenting, but does not raise a presumption or estoppel on the merits of the rejection, *Quad Environmental Technology v. Union Sanitary District*, 20 U.S.P.Q. 1392 (Fed. Cir. 1991). It is therefore submitted that the provisional rejection under the judicially created doctrine of obviousness-type double patenting has been overcome.

#### **I. Rejection Under 35 U.S.C. §102**

Claims 1, 10, 11 14-16 are rejected under 35 U.S.C. §102(b) as being anticipated by Bright, U.S. Patent 5,753,350. The Examiner asserted that Bright teaches a label 60 comprising a facestock layer having a first and second side, visible indicia 68 on a first side of the facestock layer and tactile coating 70 in the form of glue droplets 136 on the first side. The Examiner further asserted that the label taught by Bright is adhesively attached to a container such as a box, bottle or can. The Examiner also asserted that Bright teaches a method for making the label comprising providing a continuous label of stock material, applying glue droplet 136 to the substrate to form the tactile markings, cutting the stock material into labels.

However, as will be set forth in detail below, it is believed that the cut-and-stack form label defined by independent claim 1, the labeled product package defined by claims 10 and 11 and the method of making a cut-and-stack form label defined by present claims 14-16 are not anticipated by Bright. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

Claims 1, 10 and 14 have been amended herein to recite that the labels are cut-and-stack form labels capable of application to containers by automated labeling machines and to recite that the visible indicia applied to the facestock layer are printed indicia.

Applicants respectfully submit that these amendments overcome the rejections of independent claims 1, 10 and 14 because Bright does not teach all of the elements of the amended claims.

The Examiner's attention is directed to the present specification, which discloses that polymeric labels have generally not been provided in cut-and-stack form<sup>1</sup>, due to various difficulties. In particular, polymeric materials are susceptible to developing static charges which cause the individual labels to cling to one another and to the labeling equipment, thereby hindering accurate and repeatable application of the labels to the product containers. The labels according to the present invention are provided in cut-and-stack form and provide improved aesthetic appearance, while being capable of application to containers in high speed manufacturing lines.

Bright does not teach "cut-and-stack" form labels capable of application to containers by automated labeling machines, as recited in claims 1, 10 and 14. Rather, Bright is directed to sheet or roll form labels. Specifically, Bright discloses "continuous label stock or material 90 is stored on a spool 92 . . ." (Column 3, lines 64-65). Nowhere in the disclosure of Bright is it taught or suggested that the label may be provided in a cut-and-stack form for application to containers by automated labeling machines, as recited in claims 1, 10 and 14.

Similarly, Applicants find no teaching, suggestion or disclosure in Bright relating to printed visible indicia capable of application to either a first or second side of the facestock layer, as recited in claims 1, 10 and 14. To the contrary Bright et al discloses that, while glue bumps may be applied to either side of the label material, printed matter or visible indicia are applied only to the first side of the label (see e.g. column 3, lines 20-23).

Anticipation under 35 U.S.C. §102 requires the disclosure in a single prior art reference of each element of the claims under construction, *Alco Standard Corp. v. TVA*, 808 F.2d 1490, 1 U.S.P.Q.2d 1337 (1341) (Fed. Cir. 1986). For the reasons recited above, Bright does not anticipate independent claims 1, 10 and 14 under 35 U.S.C. §102(b). Claim 11 depends from independent claim 10 and claims 15 and 16 depend from independent claim 14 and therefore are in condition for allowance for at

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<sup>1</sup> A plurality of individual labels are provided in a stack to a labeling machine, generally in a magazine, whereby the machine is configured to apply individual labels from the stack to containers as they move past a labeling station (Specification, page 2, lines 15-18).

least the reasons set forth above for independent claims 10 and 14. It is therefore submitted that the rejection based on Bright has been overcome. Reconsideration is respectfully requested.

Claims 1, 3, 4, 5 and 12 are rejected under 35 U.S.C. §102(b) as being anticipated by Barr, U.S. Patent 3,667,759. The Examiner asserted that Barr teaches a deck or stack of playing cards comprising a substrate or facestock 10, a visible indicia 11 and 12 applied to a first surface of the substrate 10, and transparent layer attached to the first surface of the substrate 1 and having indicia 21 and 22 which are in bas-relief and corresponding to the indicia 11 and 12 in character and position.

However, as will be set forth in detail below, it is believed that the cut-and-stack form label defined by independent claim 1 and the supply of labels defined by independent claim 12 are not anticipated by Barr. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

Claims 1 and 12 have been amended herein to recite that the labels are cut-and-stack form labels capable of application to containers by automated labeling machines. Applicants respectfully submit that these amendments overcome the rejections of independent claims 1 and 12 because Barr does not teach all of the elements of the amended claims. Specifically, Barr does not teach "cut-and-stack" form labels capable of application to containers by automated labeling machines, as recited in claims 1 and 12. Rather, Barr is directed to playing cards. Nowhere in the disclosure of Barr is it taught or suggested that the playing cards may be provided in a cut-and-stack form for application to containers by automated labeling machines, as recited in claims 1 and 12.

Anticipation under 35 U.S.C. §102 requires the disclosure in a single prior art reference of each element of the claims under construction, *Alco Standard Corp. v. TVA*, supra. For the reasons recited above, Barr does not anticipate independent claims 1 and 12 under 35 U.S.C. §102(b). Claims 3-5 depend from independent claim 1 and therefore are in condition for allowance for at least the reasons set forth above for independent claim 1. It is therefore submitted that the rejection based on Barr has been overcome. Reconsideration is respectfully requested.

Claims 1, 3, 4, 5 and 6 are rejected under 35 U.S.C. §102(b) as being anticipated by Britt et al., U.S. Patent 4,401,050. The Examiner asserted that Britt et al teach an adhesive indicator comprising an elongated transparent tape substrate 12 having a front and rear side, visible indicia 18 on a rear side 18 of the substrate 12 and raised tactile area 14 on the front side. The indicator taught by Britt is adhesively attached to a support utilizing adhesive layer 20 on the rear side.

However, as will be set forth in detail below, it is believed that the cut-and-stack form labels defined by independent claims 1 and 6 are not anticipated by Britt et al. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

Claims 1 and 6 have been amended herein to recite that the labels are cut-and-stack form labels capable of application to containers by automated labeling machines. Applicants respectfully submit that these amendments overcome the rejections of independent claims 1 and 6 because Britt et al does not teach all of the elements of the amended claims. Specifically, Britt et al do not teach "cut-and-stack" form labels capable of application to containers by automated labeling machines, as recited in claims 1 and 6. Rather, Britt is directed to an escape route indicator in the form of an elongated strip of material. (see, column 2, lines 6-7 "formed of a sheet of material, preferable in tape form"). Nowhere in the disclosure of Britt et al is it taught or suggested that the indicator may be provided in a cut-and-stack form for application to containers by automated labeling machines, as recited in claims 1 and 6.

Anticipation under 35 U.S.C. §102 requires the disclosure in a single prior art reference of each element of the claims under construction, *Alco Standard Corp. v. TVA*, supra. For the reasons recited above, Britt et al do not anticipate independent claims 1 and 6 under 35 U.S.C. §102(b). Claims 3-5 depend from independent claim 1 and therefore are in condition for allowance for at least the reasons set forth above for independent claim 1. It is therefore submitted that the rejection based on Barr has been overcome. Reconsideration is respectfully requested.

Claims 1, 2, 3, and 5 are rejected under 35 U.S.C. §102(b) as being anticipated by Sokyka, U.S. Patent 5,512,122. The Examiner asserted that Sokyka teaches

three-dimensional sign comprising a substrate 12 having a first and second side, visible indicia 22, and tactile layer 18 and 20.

However, as will be set forth in detail below, it is believed that the cut-and-stack form labels defined by independent claim 1 is not anticipated by Sokyryka. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

Claim 1 has been amended herein to recite that the labels are cut-and-stack form labels capable of application to containers by automated labeling machines. Applicants respectfully submit that this amendment overcomes the rejection of independent claim 1 because Sokyryka does not teach all of the elements of the amended claims. Specifically, Sokyryka does not teach "cut-and-stack" form labels capable of application to containers by automated labeling machines, as recited in claim 1. Rather, Sokyryka is directed to a printing compound and method of producing three-dimensional signs. Nowhere in the disclosure of Sokyryka is it taught or suggested that the sign or method may be provided or used in a cut-and-stack form for application to containers by automated labeling machines, as recited in claim 1.

Anticipation under 35 U.S.C. §102 requires the disclosure in a single prior art reference of each element of the claims under construction, *Alco Standard Corp. v. TVA*, supra. For the reasons recited above, Sokyryka does not anticipate independent claim 1 under 35 U.S.C. §102(b). Claims 2, 3 and 5 depend from independent claim 1 and therefore are in condition for allowance for at least the reasons set forth above for independent claim 1. It is therefore submitted that the rejection based on Sokyryka has been overcome. Reconsideration is respectfully requested.

## **II. Rejections Under 35 U.S.C. §103**

The Examiner rejected claim 7 under 35 U.S.C. §103(a) as being unpatentable over Bright '350. The Examiner noted that it appears that constructing the facestock of any suitable plastic transparent material would perform equally as well as cellophane.

However, as will be set forth in detail below, Applicants submit that the labeled product package defined by claim 7 is non-obvious and patentably distinguishable from

the teachings of Bright '350. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

As defined by independent claim 7, the present invention is directed to a labeled product package. The labeled product package, comprises a container having a surface for receiving a label; and a cut-and-stack form label capable of application to containers by automated labeling machines, disposed on said surface. The label comprises a facestock layer formed from cellophane and having a first side and a second side, printed visible indicia selectively applied to one or more portions of at least one of said first and second sides of said facestock layer, at least one tactile coating layer selectively applied to discrete portions of said first side of said facestock layer to create distinct raised portions on the label for tactile feel, and an adhesive layer applied to said second side of said facestock layer.

As discussed above, Bright '350 discloses a label comprising a facestock layer having a first and second side, visible indicia on a first side of the facestock layer and tactile coating in the form of glue droplets on the first side. However, Applicants find no teaching, suggestion or disclosure in Bright '350 relating to labeled product packages as defined by independent claim 7 and containing a cut-and-stack form label capable of application to containers by automated labeling machines. To the contrary, Bright '350 is directed to sheet or roll form labels. Specifically, Bright discloses "continuous label stock or material 90 is stored on a spool 92 . . ." (column 3, lines 64-65). Similarly, Applicants find no teaching, suggestion or disclosure in Bright '350 relating to printed visible indicia capable of application to either a first or second side of the facestock layer, as recited in claim 7. To the contrary Bright et al discloses that, while glue bumps may be applied to either side of the label material, printed matter or visible indicia are applied only to the first side of the label (see e.g. column 3, lines 20-23).

To establish *prima facie* obviousness of the claimed invention, all the claim limitations must be taught or suggested in the prior art, *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). Bright '350 does not teach labeled product packages as defined by independent claim 7. Similarly, Applicants find no teaching or suggestion for modifying the teachings of Bright '350 to result in the labeled product packages as

defined by independent claim 7. Thus, Bright '350 does not support a rejection under 35 U.S.C. §103.

It is therefore submitted that the labeled product package defined by independent claim 7 is non-obvious over and patentably distinguishable from Bright '350.

The Examiner rejected claim 7 under 35 U.S.C. §103(a) as being unpatentable over Bright, U.S. patent 6,287,671. The Examiner asserted that Bright '671 teaches a transparent label having visible indicia thereon. The Examiner also noted that it appears that constructing the facestock of any suitable plastic transparent material would perform equally as well as cellophane.

However, as will be set forth in detail below, Applicants submit that the labeled product package defined by claim 7 is non-obvious and patentably distinguishable from the teachings of Bright '671. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

The labeled product package as defined by independent claim 7 is discussed in detail above. Bright '671 discloses a label comprising a facestock layer having a first and second side, visible indicia on a first side of the facestock layer and tactile coating in the form of glue droplets on the first side. However, Applicants find no teaching, suggestion or disclosure in Bright '671 relating to labeled product packages as defined by independent claim 7 and containing a cut-and-stack form label capable of application to containers by automated labeling machines. To the contrary, Bright '671 is directed to sheet or roll form labels. Specifically, Bright discloses "continuous label stock or material 90 is stored on a spool 92 . . ." (column 19, lines 64-65). Similarly, Applicants find no teaching, suggestion or disclosure in Bright '671 relating to printed visible indicia capable of application to either a first or second side of the facestock layer, as recited in claim 7. To the contrary Bright et al discloses that, while glue bumps may be applied to either side of the label material, printed matter or visible indicia are applied only to the first side of the label (see e.g. FIG. 19).

To establish *prima facie* obviousness of the claimed invention, all the claim limitations must be taught or suggested in the prior art, *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). Bright '671 does not teach labeled product packages as



defined by independent claim 7. Similarly, Applicants find no teaching or suggestion for modifying the teachings of Bright '671 to result in the labeled product packages as defined by independent claim 7. Thus, Bright '671 does not support a rejection under 35 U.S.C. §103.

It is therefore submitted that the labeled product package defined by independent claim 7 is non-obvious over and patentably distinguishable from Bright '671.

The Examiner further rejected a number of dependent claims under 35 U.S.C. §103(a). Specifically, the Examiner rejected claim 4 as being unpatentable over Barr; claim 8 as being unpatentable over Sokyrrka in view of Bright '350; claim 4 as being unpatentable over Britt; claim 9 as being unpatentable over Bright '350 in view of Sokyrrka; and claim 13 as being unpatentable over Barr in view of Sokyrrka.

As claim 4 depends from and incorporate all of the limitations of independent claim 1, claims 8 and 9 depend from and incorporate all of the limitations of independent claim 7, and claim 13 depends from and incorporates all of the limitations of independent claim 12, it is respectfully submitted that claims 4, 8-9 and 13 are patentably distinct over the cited references for all of the reasons previously presented with respect to independent claims 1, 7 and 12. *In re Fine*, 837 F.2d 1071; 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988) (if an independent claim is nonobvious than any claim depending therefrom in nonobvious).

Finally, the Examiner rejected claim 6 under 35 U.S.C. §103(a) as being unpatentable over Britt et al. The Examiner noted that it appears that constructing the facestock of any suitable plastic transparent material would perform equally as well as cellophane.

However, as will be set forth in detail below, Applicants submit that the label defined by claim 6 is non-obvious and patentably distinguishable from the teachings of Britt et al. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

As defined by independent claim 6, the present invention is directed to a cut-and-stack label capable of application to containers by automated labeling machines. The label comprises a facestock layer formed from transparent cellophane and having a first

side and a second side; and visible indicia selectively screen printed to one or more portions of at least one of said first and second sides of said facestock layer.

As discussed above, Britt et al discloses an escape route indicator in the form of an elongated strip of material. (see, column 2, lines 6-7 "formed of a sheet of material, preferable in tape form"). However, Applicants find no teaching, suggestion or disclosure in Britt et al relating to cut-and-stack labels as defined by independent claim 6 and capable of application to containers by automated labeling machines. To the contrary, Britt et al is directed to an escape route indicator for use with buildings, not containers.

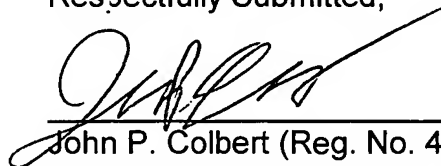
To establish *prima facie* obviousness of the claimed invention, all the claim limitations must be taught or suggested in the prior art, *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). Britt et al do not teach labels as defined by independent claim 6. Similarly, Applicants find no teaching or suggestion for modifying the teachings of Britt et al to result in the labels as defined by independent claim 6. Thus, Britt et al do not support a rejection under 35 U.S.C. §103.

It is therefore submitted that the label defined by independent claim 6 is non-obvious over and patentably distinguishable from Britt et al.

It is believed that the above represents a complete response to the Examiner's rejections under 35 U.S.C. §§'s 102 and 103 and places the present application in condition for allowance.

Submitted concurrently herewith is a *Petition for Extension of Time* to extend the time for responding to the Office Action dated October 1, 2004, for 1 month from January 1, 2005 to February 1, 2005.

Respectfully Submitted,



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